In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1024

GEYER BROADCASTING CO., PETITIONER

v.

HON. CALE T. HOLDER, UNITED STATES DISTRICT JUDGE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

---

1. The Secretary of Labor brought this suit under Section 17[1] of the Fair Labor Standards Act (29 U.S.C. 217) to restrain petitioner from continuing to violate the overtime and recordkeeping provisions of the Act (29 U.S.C. 207, 211(c), set forth at Pet. 16–17) and from continuing to withhold the payment of overtime compensation due certain of its employees. Petitioner filed a demand for a jury trial along with its answer. The Secretary moved to strike

[1] Section 17 of the Fair Labor Standards Act provides, in pertinent part: "The district courts * * * shall have jurisdiction for cause shown, to restrain violations of section 15, including in the case of violations of section 15(a)(2) the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this Act * * *."

412-848—70

the demand and his motion was granted. Petitioner then sought a writ of mandamus from the court of appeals to compel the granting of a jury trial, but such relief was denied (Pet. App. 14–15).

2. The decision below presents no conflict with any other court of appeals decision. Indeed, the only other circuit to consider the question has reached the same result. See *Wirtz* v. *Jones*, 340 F.2d 901 (C.A. 5), and *Sullivan* v. *Wirtz*, 359 F.2d 426 (C.A. 5), certiorari denied, 385 U.S. 852.[1]

The line of cases on which petitioner relies, including this Court's recent decision in *Ross* v. *Bernhard*, 396 U.S. 531, all involved actions brought by private individuals to enforce legal claims. By contrast, the purpose of a suit by the Secretary of Labor for a statutory injunction "is not to collect a debt owed by an employer to his employee but to correct a continuing offense against the public interest," and the award of back pay "is simply a part of a reasonable and effective means which Congress, after trial and error, found it necessary to adopt to bring about general compliance * * *." *Wirtz* v. *Jones*, *supra*, 340 F.2d at 904.

[1] Numerous district courts in other circuits have uniformly rejected demands for jury trial in suits under Section 17 of the Fair Labor Standards Act. See, *e.g.*, *Wirtz* v. *Active City Wide Service Co.*, 230 F.Supp. 666 (N.D. Ill.); *Wirtz* v. *Robert E. Bob Adair, Inc.*, 224 F.Supp. 750 (W.D. Ark.); *Wirtz* v. *Tinker's Bigg and Littel Stores*, 16 WH Cases 657, 50 Lab. Cases ¶ 31,622 (N.D. Cal., not officially reported); *Wirtz* v. *Moorehead*, 16 WH Cases 417, 49 Lab. Cases ¶ 31,555 (W.D. S.C., not officially reported); *Wirtz* v. *Florence and Co.*, 18 WH Cases 631, 58 Lab. Cases ¶ 32,097 (D. Kan., not officially reported); *Wirtz* v. *Sesame Oil Co.*, 293 F.Supp. 211 (E.D. Pa.).

Moreover, it has repeatedly been held that the right to a jury trial does not extend to statutory injunction suits brought by the officials responsible for the enforcement of regulatory legislation. See, *e.g.*, *Co-Efficient Foundation* v. *Woods*, 171 F. 2d 691 (C.A. 5), *McCoy* v. *Woods*, 177 F. 2d 354 (C.A. 4), *Timmons* v. *United States*, 194 F. 2d 357 (C.A. 4), certiorari denied, 344 U.S. 844, *Howard* v. *United States*, 214 F. 2d 759 (C.A. 10)—all actions under the Emergency Price Control Act of 1942 for injunction and restitution of rent overcharges[1]—and *Harkness* v. *Sweeny Independent School District*, 427 F. 2d 319 (C.A. 5), petition for certiorari pending, No. 561, this Term, and *Johnson* v. *Georgia Highway Express Inc.*, 417 F. 2d 1122 (C.A. 5)—both actions under the Civil Rights Act of 1964 for injunction and back wages.

---

[1] *Leimer* v. *Woods*, 196 F. 2d 828 (C.A. 8), relied on by petitioner (Pet. 13), is not to the contrary. Although brought under the Emergency Price Control Act, it sought both restitution and treble damages. Because of the legal claim for damages, the court ordered a jury trial for this aspect of the case. The court specifically acknowledged, however, that "[t]he *granting of general* injunctive or restitutive relief * * * plainly is an exercise of jurisdiction by a court of equity and as such does not involve any right to a jury trial" (196 F. 2d at 832). The court's treatment of the jury trial issue was cited with approval by this *Court in Beacon Theatres* v. *Westover*, 359 U.S. 500, 511.

For the foregoing reasons, it is respectfully submitted that the petition for a writ certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
Solicitor of Labor,
BESSIE MARGOLIN,
Associate Solicitor,
CARIN ANN CLAUSS,
LEROY M. JAHN,
Attorneys,
Department of Labor.
DECEMBER 1970.

U.S. GOVERNMENT PRINTING OFFICE 0— 1970